

REPORT

OF THE

COUNCIL ON LEGAL EDUCATION

AND OF THE

COMMITTEE ON LEGAL EDUCATION AND ADMISSIONS
TO THE BAR.

*(To be presented at the meeting of the American Bar Association,
at Cleveland, Ohio, August 28, 29, 30, 1918.)*

To the American Bar Association:

Your Council on Legal Education and your Committee on Legal Education and Admissions to the Bar, being composed of the same persons, submit the following report.

The Council on Legal Education was appointed in pursuance of the adoption by the Association of the recommendation made by the committee a year ago and which reads as follows:

“That the following By-Law be adopted:

“There shall be a Council on Legal Education which shall consist of five members appointed by the President. The members first appointed shall continue in office for the term of one, two, three, four and five years, respectively, the term of each to be designated by the President; and their successors shall be appointed for terms of five years.

“The Council shall appoint a permanent secretary who shall not be a member of the body. It shall be the duty of the Council to report annually in writing to the Association. And its acts shall not be final until approved by the Association.

“It shall make suggestions as to the steps which the Association should take to elevate the standard of legal education and of admissions to the Bar.

“It shall inspect the law schools of the country and may, subject to the approval of this Association, classify them.

“It shall perform such other duties as may be devolved upon it from time to time by the Association.”

The President of the Association accordingly appointed Henry Wade Rogers Chairman, and named him for the term of five years; John H. Wigmore for the term of four years; William R. Vance for the term of three years; Harlan F. Stone for the term of two years; and Roscoe Pound for the term of one year.

The Council has appointed as Secretary Henry M. Bates, Dean of the Law School of Michigan University.

The Committee on Legal Education should now be abolished. Its abolition would have been undoubtedly effected last year but for a technicality which prevented its consideration.

If the suggestion should be made that the Committee on Legal Education should be retained in the interest of a uniformity among the standing committees and that the powers now vested in the Council should be vested for that reason in the committee, we desire to say that in our opinion the suggestion is without merit. It might as well be suggested that in the interest of uniform nomenclature the title of the General Council should be changed to General Committee, and that of Local Council to Local Committee.

The powers vested in the Council on Legal Education are different from the powers vested in any standing committee. Not only does the Council differ in function from any standing committee, but it differs in the tenure of its members as they are not appointed from year to year and should not be so appointed for reasons hereinafter stated.

We therefore recommend that By-Law II be amended by inserting between the Report of Executive Committee and Reports of Standing Committees the words, "Report of Council on Legal Education," the same to be subdivision (f), and that the present subdivision (f) be changed to subdivision (g), and that the present subdivisions (g), (h), (i), (j) be correspondingly changed to (h), (i), (j) and (k), respectively.

We also recommend that what is now subdivision (f) be also amended by omitting therefrom the words "On Legal Education and Admissions to the Bar."

In making the above recommendations we deem it important to recall the attention of the Association to that part of the report of last year which refers to the creation of the Council on Legal Education, and which is as follows:

"We now desire to bring to the attention of the Association the importance of the creation of a Council on Legal Education. The creation of such a council with appropriate powers seems to us the most important forward step that this Association can take at this time.

* * * * *

The Council on Legal Education in England, has given to the phrase a meaning of its own and if we are to have a Council on

Legal Education in the United States its functions should bear some resemblance to that of the one in England.

In that country a Council on Legal Education has existed since 1852 and it has been charged with the control of the legal education of persons preparing for the Bar. It is appointed by the four Inns of Court, and it is composed of 20 judges and barristers. Its members fix the subjects upon which law instruction is to be given, appoint the persons who are to give the instruction, called readers and assistant readers, and determine the time, place and manner of the examinations to be passed by students desiring to be called to the Bar. The duties of the Council on Legal Education are restricted to the supervision of would-be barristers. The education of the solicitors is in the hands of the Incorporated Law Society.

In proposing the creation by this Association of a Council on Legal Education we are not assuming that the Association can give to it the same control over the subject that the Inns of Court have given to the Council on Legal Education in England. It is not within the power of this Association to confer a like authority, even if it were desirable that it should be conferred, which we do not assert. But we believe nevertheless that a Council on Legal Education created by and responsible to the American Bar Association can become an effective agency in promoting higher standards both among the law schools and the state boards of law examiners.

As we are satisfied that a Council on Legal Education should exist we are also satisfied that it should be the agency of the American Bar Association and that when it speaks its voice should be the voice of this Association. A council created by the Association of American Law Schools would labor under certain serious disadvantages, which would not attach to one created by this Association. That Association has a membership of only 47 schools. The number of schools within it is less than the number of schools without it. Action taken by a council created by that Association would in the very nature of things be distrusted by the large number of schools which are not of its number. But quite irrespective of that, although that is an objection of no inconsiderable importance, there remains the fact that the American Bar Association is the body whose duty and high privilege it is to speak for the American Bar, and to say what education is in its opinion sufficient and what training is ade-

quate and desirable to prepare American lawyers for the practice of their profession. It, and not the Association of American Law Schools, should create therefore a Council on Legal Education, and the latter body should report to the Bar Association all its recommendations and determinations, which recommendations and determinations should become authoritative only after confirmation by this Association.

It may be said that such a Council should be constituted by the joint action of this Association and of the Association of American Law Schools. In this view we are unable to concur, believing, as we do, that it should be created by one body to which alone it should be responsible.

In case a Council on Legal Education is created by the Association we can see no reason for the continued existence of the Committee on Legal Education and Admissions to the Bar. The functions of this committee should be performed by the Council which would take its place, and all matters relating to the subject of legal education or admissions to the Bar coming before the Association should be referred to the Council for its recommendation and report prior to final action by the Association.

The Council on Legal Education if its work is to be performed with the same degree of efficiency as has characterized the Council on Medical Education will need to have a fund which it can use for its expenses in the carrying on of its work. The expenses of the Council on Medical Education have varied from year to year from a minimum of \$5,500 to a maximum of \$10,000. This expense involves a large amount which this Association, its membership being much less than that of the Medical Association, could not at present provide in full out of its own treasury. But it is not to be doubted that if such a council is established a fund can in time be obtained, supplementing that which the Association can furnish which will enable the work to be prosecuted with efficiency. In the meantime the Council, we are persuaded, can carry on its work in a manner to justify its existence, although not with the efficiency and thoroughness which has attended that of the Council on Medical Education. Until a Council on Legal Education has been created, and the attitude of the Association respecting it has been made known, it is hardly to be expected that a fund will be provided in advance to enable it to accomplish its work. But after the council is once established an endowment

should be secured which should be held in trust by the Treasurer of this Association for the purposes involved.

The Association in acting upon this recommendation for the creation of the Council on Legal Education may well take into account the remarkable progress which has been made in this country in medical education since 1905. A review of the period justifies fully the claim advanced by the Chairman of the Council on Medical Education when he declared in February, 1916, that 'The American medical profession has done more during this period to put itself on a sound basis and make itself efficient than has been done by any other profession or men in any other field of effort.' The oversupply of medical schools has been reduced by about 40 per cent; the number of higher standard colleges has been increased over 80 per cent. The figures in regard to medical students and graduates show an improvement in quality as compared with quantity in about the same proportions. In 1904 there were 162 medical colleges in the United States and in 1905 the number was reduced to 95. In 1904 the number of medical students was 28,142, and in 1915 it was 14,891. In 1904 the number of students in the high standard medical colleges was 6 per cent and in 1915 it was 80 per cent. The number of medical students graduated in 1904 was 5747 and in 1915 it was 3536. The number graduated in 1904 from high standard medical colleges was 369 and in 1915 it was 2652. The percentage from high standard colleges being 6.4 in 1904 and 75 per cent in 1915.

At the present time 54 of the 95 medical colleges now require for admission two years of college work, and that standard of preliminary education has been adopted by 15 state licensing boards. The following states through their state examining boards now require two years of college work in addition to a four-year high school course as the preliminary education of all medical students: Alabama, Arizona, Colorado, Indiana, Iowa, Maryland, Minnesota, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

In the 30 years following the Civil War the number of medical colleges in this country multiplied so greatly that in 1904 we had in the United States over half of the total number existing in the world. A few only were well managed, the larger

number of them were owned by private individuals or joint stock corporations, and were conducted for profit. To increase the profits all methods were resorted to, and low standards of admission and of graduation prevailed. To our shame and mortification much the same story marks the history of too many of the law schools. And it is because of this condition only too well known to the profession that this committee advises the Association to adopt the same policy which the Medical Association has pursued to its honor and to the advancement of sound medical education. By the creation of a Council on Legal Education we may hope in time for similar results as respects legal education.

The Council on Medical Education grades all medical colleges on a civil service basis on a scale of 1000 points. The data relating to each college are grouped under ten general heads in such manner that the groups have as nearly equal weight as possible, each group allowing a possible 100 points (10 per cent) out of a possible 1000 points (100 per cent). The ten heads under which the data are arranged are as follows:

1. Showing of graduates before state boards and other evidences of the training received.
2. Enforcement of a satisfactory preliminary education requirement, granting of advance standing and the character of records.
3. Character of curriculum, grading of course, length of session, time allowed for matriculation and supervision.
4. Medical school buildings; light, heat, ventilation, cleanliness.
5. Laboratory facilities and instruction.
6. Dispensary facilities and instruction.
7. Hospital facilities and instruction, maternity work, necropsies, specialties.
8. Faculty, number and qualifications of trained teachers, full-time instructors, and assistants, especially of the laboratory branches, organization, and extent of research work.
9. Extent to which the school is conducted for properly teaching the science of medicine rather than for the profit of the faculty directly or indirectly.
10. Possession and use made of libraries, museums, charts, stereopticons, etc.

Class A colleges are those which are acceptable; Class B, those which, under their present organization, might be made acceptable by general improvements, and Class C, those which require a complete reorganization to make them acceptable.

A Council on Legal Education when created by adopting a similar policy can perform a most useful service for the legal profession.

To enable the Council to perform its work efficiently it is essential that its members shall have their tenure of office for a period of sufficient length to enable them to carry into effect any policy which they may deem wise and which this Association may approve. For that reason the tenure should be fixed at five years."

THE STANDARD RULES.

The committee last year reported on the Standard Rules for Admission to the Bar referred to it by the American Bar Association in 1916, and as no action was taken on the subject, for the reason already stated, that matter, with certain other matters for the like reason was referred to this committee, we report that in our opinion the recommendations submitted last year should be adopted for the reasons then stated which seem to us satisfactory and conclusive. See Report of American Bar Association for 1917, pp. 447-476.

The rules as proposed by the Section and the modifications suggested therein by the committee, together with the reasons therefor, were set forth at length in the report made last year. We have examined the matter in detail and concur in all respects with the conclusions which the committee reached last year. It would unduly extend this report to incorporate into it the discussion of the rules, and we must content ourselves with the hope that those who doubt the wisdom of our conclusions will examine the report of last year to ascertain the reasons which led the committee of last year and that of this year to reach the same identical result in the recommendations upon this subject.

REORGANIZATION OF THE SECTION ON LEGAL EDUCATION.

The committee intimated a year ago that it thought the time had come for a reorganization of the Section on Legal Education. We are convinced that a reorganization of the Section is certainly demanded and ought not longer to be postponed. The Section was created in 1893 and was the first Section the Association authorized. At the time it was formed there was no association of law schools in existence, and for many years it

served a very useful purpose. The Association of American Law Schools was formed in 1900, and for a number of years the Section and the Association of Law Schools held their meetings at the same time and place fixed for the meetings of the Bar Association. But now for a number of years the Association of Law Schools has held its meetings, and very successful meetings they have been, apart from the meetings of the Bar Association. This plan of holding the meetings at a different time and place was adopted as the Law Schools' Association found it difficult to obtain a sufficient time for its meetings in conjunction with the meetings of the Section. Moreover, both bodies were discussing very largely the same questions, which added to the difficulties of the situation. Again the Section had no definite membership and any member of the Bar Association was at liberty not only to participate in the discussions, but to vote upon all questions which came up.

It is now most desirable, it seems to us, that the Association of Law Schools should be brought into close relations with the Bar Association. The advantages of such an arrangement are manifest and mutual, and we believe that if the Bar Association maintains its purpose to stand for the highest standards in legal education and to exert a positive influence upon the law schools, even as the Medical Association has done upon the medical schools, the result can be accomplished.

That such is the purpose of the Bar Association was shown by its practically unanimous vote in creating the Council on Legal Education one year ago, and so long as that action stands no one can question what the attitude of the Bar Association is upon this vital subject.

The Association of the Law Schools is on record in favor of a Council on Legal Education with such powers as the Bar Association has given it, and we believe that the two associations can work together in a closer relationship than ever before existed. We believe that this can be accomplished through a reorganization of the Section. With this end in view we submit the recommendation for the amendment of By-Law XIV, which is found at the end of this report.

GENERAL REMARKS.

The report for 1917 of the president of the Carnegie Foundation for the Advancement of Teaching refers to the effect of the Civil War upon the student attendance in the law schools of the United States. After citing the figures Mr. Pritchett says: "It would appear, therefore, that in the North, war conditions in and of themselves did not operate to produce to any serious extent an actual reduction in law school attendance." The effect of war and reconstruction upon the Southern schools was much more disastrous and long continued. The effect of the present world war, we venture to add, is affecting the Northern schools much more seriously than did the war of 1861-65. The following table is of interest:

LAW SCHOOL ATTENDANCE 1860-1868.

	1860-60.	1860-61.	1861-62.	1862-63.	1863-64.	1864-65.	1865-66.	1866-67.	1867-68.
Columbia University....	62	100	111	149	169	158	178	166	184
Georgia University.....	26	40	...	...	...	...	8	0	10
Harvard University.....	166	158	103	89	124	125	177	157	125
Michigan University....	90	159	129	134	221	260	385	395	387
Mississippi University..	29	19	25	...	...	...	...	...	24
Pennsylvania University.	71	71	54	47	62	65	66	67	67
Virginia University.....	131	135	9	5	7	10	67	121	109
Yale University.....	28	30	28	34	31	32	35	26	16

The investigation of the subject of Legal Education and Admissions to the Bar which at the request of your Committee on Legal Education the Carnegie Foundation for the Advancement of Teaching began in 1913 has not yet resulted in a final report. We said in our report of last year that it was supposed that this final report of the Carnegie Foundation would be made in the early part of 1918. This expectation has not been realized and at this writing we are informed that it is now expected that the report will be published in about six months, which would be in December of this year.

We are informed by the United States Commissioner of Education at Washington that no statistical data as to the number of students enrolled in the law schools of this country in 1917 were collected. We learn from the same source that of the 124 law

schools in the United States in 1917, 1 offered a course of one year; 18 of two years; 1, two to three years; 87, three years; 6, three to four years; 11, four years.

The Council on Legal Education has organized and mapped out the work in a general way which it proposes to undertake. But it has not commenced its active study of existing conditions.

The appropriation made by the Executive Committee has been insufficient to justify us in entering actively at this time upon the work which the Bar Association has authorized. We do not permit ourselves to doubt that adequate appropriation will be made and that the American Bar Association, having committed itself to the policy which the American Medical Association adopted 14 years ago, and which that association has consistently and energetically followed since to its great honor and to the concededly great advantage of medical education in the United States, will maintain that policy with as much vigor and interest as has characterized the Medical Association in its attitude on the like subject. To pursue any other policy, it seems to us, is impossible for an association having for its object the advancement of the science of jurisprudence and the promotion of the administration of justice in the United States. It would be to subject the Association to such an impairment of its prestige in the public opinion of the country as would be most unfortunate and prejudicial from every point of view. It would be to make the greatest mistake which has been made in the history of the Association.

THE RECOMMENDATIONS.

In conclusion we state our recommendations as follows:

1. Amend By-Law II by inserting between the Report of Executive Committee and Reports of Standing Committees the words, "Report of Council on Legal Education," the same to be subdivision (f), and that the present subdivision (f) be changed to subdivision (g), and that the present subdivisions (g), (h), (i), (j) be correspondingly changed to (h), (i), (j) and (k), respectively.
2. Further amend By-Law II in what is now subdivision (f) by omitting therefrom the words "On Legal Education and Admissions to the Bar."
3. That the Standard Rules be adopted with the modifications as proposed by this committee, making them read as follows:

(1) Examination for admission to the Bar should be conducted in each state by a paid board of five members appointed by the highest Appellate Court.

(2) A law diploma should not entitle the holder to admission to the Bar without examination by this board.

(3) The candidate should at the time of his admission be a citizen of the United States.

(4) He should also be a citizen of the state in which he is applying for admission, or prove that it is his intention personally to practice law therein.

(5) There should be an examination by the board as to the moral character of each applicant for admission to the Bar, which examination should be in addition to the requirement of certificates as to his moral character, and in addition to the examination as to educational qualifications. And each applicant should satisfy the board as to his moral fitness to practice law. The applicant should be required to file with the board evidence that he is a person of good moral character which should include the affidavits of three responsible citizens, two of whom should be members of the Bar of the state, and the affidavits should set forth how long a time, when and under what circumstances those making the same have known the candidate and that he is to the knowledge of the affiants a person of good moral character.

(6) Three years' practice in states having substantially equivalent requirements for admission to the Bar should be sufficient in the case of lawyers from other jurisdictions applying for admission on grounds of comity provided the board after an independent investigation is satisfied as to the moral character and professional standing of the applicant in the state from which he has removed.

(7) Every candidate should satisfy the board that he has passed the necessary requirements for entrance to the collegiate department of the state university of the candidate's state, or of such college or colleges as may be approved by the state board of law examiners, or an examination equivalent thereto conducted by the authority of the state.

(8) Every applicant should be required to have successfully completed the prescribed course of instruction and passed the examinations of a law school, approved by the board, which requires for the completion of its course not less than three years of resident attendance during the day time, or not less than four years of resident attendance if a substantial part or all of the exercises of the school are in the evening.

(9) At least 30 days before the state board's certificate shall be issued to any candidate who shall have passed the examination, the name of each candidate should be published by the state board in a newspaper of general circulation, and also in a law periodical, if there be one within the state jurisdiction.

4. That By-Law XIV be repealed and that there be substituted therefor the following:

A Section of the Association, to be known as the Section on Legal Education is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

The Section shall consist of:

1. A Conference of Law Schools.

2. A Conference of State Boards of Law Examiners.

The object of the Conference of Law Schools shall be the discussion of methods of legal education.

The object of the Conference of State Boards of Law Examiners shall be the methods of law examiners.

And each Conference may discuss the rules which should govern admission to the Bar and may make recommendations to the Association, which shall be referred by the Association to the Council on Legal Education for its consideration and report.

The members of the Conference of Law Schools shall be all law schools now in the Association of American Law Schools and such schools as may be recommended by the Conference of Law Schools and approved by the American Bar Association.

The members of the Conference of State Boards of Law Examiners shall be all State Boards of Law Examiners which now conduct their examinations in writing, and such state boards as may be recommended by the Conference and approved by the American Bar Association.

The meetings of the Conference of Law Schools and those of the Conference of State Boards of Law Examiners shall be held separately except that there shall be held at least one joint session of the two Conferences.

Any member of the American Bar Association may participate in the discussions in either Conference. But the right to vote in each Conference is restricted as follows:

In the Conference of Law Schools each school shall have one vote.

In the Conference of State Boards of Law Examiners each board shall have one vote.

There shall be a Chairman and Secretary of the Section who shall be elected annually in the joint session of the two Conferences.

There shall be a Vice-Chairman and Secretary for each Conference, each of whom shall be elected annually by it. There shall be such committees as each Conference shall from time to time appoint.

The Chairman and Secretary of the Section and the Vice-Chairmen and Secretaries of the Conferences, together with the Council on Legal Education, shall constitute the Executive Com-

mittee of the Section and shall arrange the program of the meetings of the Section.

The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

5. Adopt the following resolution:

Resolved, That the American Bar Association approves the action taken by many of the law schools in requiring two years of a college course as a condition of admission to their courses of study, and the Association expresses the conviction that this should be the minimum requirement recognized by law schools of the first class.

HENRY WADE ROGERS,
JOHN H. WIGMORE,
WILLIAM R. VANCE,
HARLAN F. STONE,
ROSCOE POUND.